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May 17, 2021

Hon. Kenneth M. Karas
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, NY 10601-4150
via ECF

Re: Lawless v. Westchester County, et. al., Docket # 7:20-cv-8003
Motion to Request Permission to Amend Complaint

Your Honor:

I am the attorney for the plaintiff, Justin Lawless. I write to request permission to file a Second Amended Complaint. A copy of the proposed Second Amended Complaint is attached as Exhibit 1. As the Court can see, the Second Amended Complaint adds one claim - Deliberate Indifference to Medical Needs - in violation of the 14th Amendment to the United States Constitution. The proposed Second Amended Complaint also embodies the agreement that we came to during the May 10th Court conference regarding the dismissal of certain claims and parties. Defendants' counsel does not consent to this request.

Given FRCP 15(a)(2)'s express instruction that leave to amend "should be freely given," the Second Circuit has made clear its preference that claims be decided on the merits. In fact, Second Circuit authority provides that plaintiff should be afforded the opportunity to address deficiencies identified by the court even where a court grants a motion to dismiss, in whole or in part, a circumstance not present here. *Kopchik v. Town of E. Fishkill*, 759 Fed. Appx. 31, 38, 2018 U.S. Dist. LEXIS 36443 (2nd Cir. 2018); *Loreley Fin. Jersey No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F. 3d 160, 189-91 (2d Cir. 2015). And while "the decision whether to grant leave to amend is within the discretion of the district court, refusal to grant leave must be based on a valid ground. *Ronzani v. Sanofi S.A.*, 899 F.2d 195, 198 (2d Cir.1990) (quoting 2A Moore's Federal Practice ¶ 12.14, at 12-99 (2d ed.1989)). Where the possibility exists that the defect can be cured and there is no

Defendants will not suffer any prejudice if the Court permits plaintiff to file the Second Amended Complaint. Defendants have not filed their Answer, they have not conducted any discovery and no depositions have been conducted. And there is no Rule 16 Case Management Scheduling Order that has been filed. Equally important, there is plenty of time left on the 3 year Statute of Limitations for this claim. It would be wasteful if plaintiff were required to start a new action to assert the new claims contained in the Second Amended Complaint.

I also apologize for not addressing this at the Court Conference on May 10, 2021, and for the clear inconvenience this may cause. I take full responsibility for this inadvertence. I just finished a State Court trial in Queens (*People v. Daniel Brown*, CR-026880-19QN), and myself and Ms. Caitlin Robin are starting trial tomorrow Tuesday May 18, 2021 in the SDNY (*J-Quan Johnson v. City of New York*, 1:15-CV-06915 (ER)) before Judge Ramos. That is no excuse, but my mind was focused on pressing trial matters.

For the reasons identified above, we request a motion schedule or a pre-motion conference to set a motion schedule for permission to file the proposed Second Amended Complaint. We also would agree that the Defendants’ current motion to dismiss can be held in abeyance, pending the Court’s determination as to whether to allow us to amend our complaint. Again, the Defendants will suffer no prejudice if the requested relief is granted. And we have also already executed the proposed stipulation by Defendants encompassing everything discussed at the May 10, 2021 Court Conference.

Thank you for your consideration in this matter.

Respectfully submitted,

/s/ Cary London, Esq.

Cary London, Esq.

Attorney for Plaintiff

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CC: *All Parties*
Via ECF